

ASSEMBLY BILL

No. 926

**Introduced by Assembly Member Ruskin
(Principal coauthor: Assembly Member Hill)
(Coauthor: Assembly Member Price)**

February 26, 2009

An act to amend Section 14837 of the Government Code, to amend Section 999 of the Military and Veterans Code, and to amend Sections 10302, 10344, and 12104.5 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 926, as introduced, Ruskin. State contracts: goods: loss leader.

(1) Existing law governs contracting between state agencies and private contractors, and sets forth requirements for the procurement of materials, supplies, equipment, and services, and the acquisition of information technology goods and services by state agencies. Under existing law, it is unlawful for any person engaged in business with this state to sell or use any article or product as a "loss leader," as defined.

This bill would require a statement of this latter provision to be specified in a solicitation for a state contract for goods, a request for proposal for a contract for services that involves the furnishing of equipment, materials, or supplies and a request for proposal for a state contract for the acquisition of information technology goods and services.

(2) Existing law encourages state agencies that enter into contracts to establish goals to facilitate the participation of small businesses and disabled veteran business enterprises.

This bill would make technical, nonsubstantive changes to those provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 14837 of the Government Code is
2 amended to read:
3 14837. As used in this chapter:
4 (a) "Department" means the Department of General Services.
5 (b) "Director" means the Director of General Services.
6 (c) "Manufacturer" means a business that meets both of the
7 following requirements:
8 (1) It is primarily engaged in the chemical or mechanical
9 transformation of raw materials or processed substances into new
10 products.
11 (2) It is classified between Codes 31 to 33, inclusive, of the
12 North American Industry Classification System.
13 (d) (1) "Small business" means an independently owned and
14 operated business that is not dominant in its field of operation, the
15 principal office of which is located in California, the officers of
16 which are domiciled in California, and ~~that~~ *which*, together with
17 affiliates, has 100 or fewer employees, and average annual gross
18 receipts of ten million dollars (\$10,000,000) or less over the
19 previous three years, or is a manufacturer, as defined in subdivision
20 (c), with 100 or fewer employees.
21 (2) "Microbusiness" is a small business ~~that~~ *which*, together
22 with affiliates, has average annual gross receipts of two million
23 five hundred thousand dollars (\$2,500,000) or less over the
24 previous three years, or is a manufacturer, as defined in subdivision
25 (c), with 25 or fewer employees.
26 (3) The director shall conduct a biennial review of the average
27 annual gross receipt levels specified in this subdivision and may
28 adjust that level to reflect changes in the California Consumer
29 Price Index for all items. To reflect unique variations or
30 characteristics of different industries, the director may establish,
31 to the extent necessary, either higher or lower qualifying standards
32 than those specified in this subdivision, or alternative standards
33 based on other applicable criteria.

(4) Standards applied under this subdivision shall be established by regulation, in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2, and shall preclude the qualification of businesses that are dominant in their industry. In addition, the standards shall provide that the certified small business or microbusiness shall provide goods or services that contribute to the fulfillment of the contract requirements by performing a commercially useful function, as defined below:

(A) A certified small business or microbusiness is deemed to perform a commercially useful function if the business does all of the following:

(i) (I) Is responsible for the execution of a distinct element of the work of the contract.

(II) Carries out its obligation by actually performing, managing, or supervising the work involved.

(III) Performs work that is normal for its business services and functions.

(ii) Is not further subcontracting a portion of the work that is greater than that expected to be subcontracted by normal industry practices.

(B) A contractor, subcontractor, or supplier will not be considered to perform a commercially useful function if the contractor's, subcontractor's, or supplier's role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of small business or microbusiness participation.

(e) "Disabled veteran business enterprise" means an enterprise that has been certified as meeting the qualifications established by subdivision (g) of Section 999 of the Military and Veterans Code.

SEC. 2. Section 999 of the Military and Veterans Code is amended to read:

999. (a) This article shall be known as, and may be cited as, the California Disabled Veteran Business Enterprise Program. The California Disabled Veteran Business Enterprise Program is established to address the special needs of disabled veterans seeking rehabilitation and training through entrepreneurship and to recognize the sacrifices of Californians disabled during military service. It is the intent of the Legislature that every state procurement authority honor California's disabled veterans by taking all practical actions necessary to meet or exceed the disabled

1 veteran business enterprise participation goal of a minimum of 3
2 percent of total contract value.

3 (b) As used in this article, the following definitions apply:

4 (1) “Administering agency” means the Treasurer in the case of
5 contracts for professional bond services, and the Department of
6 General Services’ Office of Small Business and Disabled Veteran
7 Business Enterprise Services, in the case of contracts governed by
8 Section 999.2.

9 (2) “Awarding department” means—~~any~~ a state agency,
10 department, governmental entity, or other officer or entity
11 empowered by law to issue bonds or enter into contracts on behalf
12 of the ~~State of California~~ state.

13 (3) “Bonds” means bonds, notes, warrants, certificates of
14 participation, and other evidences of indebtedness issued by, or
15 on behalf of, the ~~State of California~~ state.

16 (4) “Contract” includes any agreement or joint agreement to
17 provide professional bond services to the State of California or an
18 awarding department. “Contract” also includes any agreement or
19 joint development agreement to provide labor, services, materials,
20 supplies, or equipment in the performance of a contract, franchise,
21 concession, or lease granted, let, or awarded for, and on behalf of,
22 the ~~State of California~~ state.

23 (5) (A) “Contractor” means any person or persons, regardless
24 of race, color, creed, national origin, ancestry, sex, marital status,
25 disability, religious or political affiliation, age, or any sole
26 proprietorship, firm, partnership, joint venture, corporation, or
27 combination thereof—~~who~~ that submits a bid and enters into a
28 contract with a representative of a state agency, department,
29 governmental entity, or other officer empowered by law to enter
30 into contracts on behalf of the ~~State of California~~ state.
31 “Contractor” includes any provider of professional bond services
32 who enters into a contract with an awarding department.

33 (B) “Disabled veteran business enterprise contractor,
34 subcontractor, or supplier” means any person or entity that has
35 been certified by the administering agency pursuant to this article
36 and that performs a “commercially useful function,” as defined
37 below, in providing services or goods that contribute to the
38 fulfillment of the contract requirements:

39 (i) A person or an entity is deemed to perform a “commercially
40 useful function” if a person or entity does all of the following:

1 (I) (aa) Is responsible for the execution of a distinct element of
2 the work of the contract.

3 (ab) Carries out the obligation by actually performing, managing,
4 or supervising the work involved.

5 (ac) Performs work that is normal for its business services and
6 functions.

7 (II) Is not further subcontracting a portion of the work that is
8 greater than that expected to be subcontracted by normal industry
9 practices.

10 (ii) A contractor, subcontractor, or supplier will not be
11 considered to perform a “commercially useful function” if the
12 contractor’s, subcontractor’s, or supplier’s role is limited to that
13 of an extra participant in a transaction, contract, or project through
14 which funds are passed in order to obtain the appearance of a
15 disabled veteran business enterprise participation.

16 (6) “Disabled veteran” means a veteran of the military, naval,
17 or air service of the United States, including, but not limited to,
18 the Philippine Commonwealth Army, the Regular Scouts, “Old
19 Scouts,” and the Special Philippine Scouts, “New Scouts,” who
20 has at least a 10-percent service-connected disability and who is
21 domiciled in the ~~State of California~~ *state*.

22 (7) (A) “Disabled veteran business enterprise” means a business
23 certified by the administering agency as meeting all of the
24 following requirements:

25 (i) It is a sole proprietorship at least 51 percent owned by one
26 or more disabled veterans or, in the case of a publicly owned
27 business, at least 51 percent of its stock is owned by one or more
28 disabled veterans; a subsidiary that is wholly owned by a parent
29 corporation, but only if at least 51 percent of the voting stock of
30 the parent corporation is owned by one or more disabled veterans;
31 or a joint venture in which at least 51 percent of the joint venture’s
32 management, control, and earnings are held by one or more
33 disabled veterans.

34 (ii) The management and control of the daily business operations
35 are by one or more disabled veterans. The disabled veterans who
36 exercise management and control are not required to be the same
37 disabled veterans as the owners of the business.

38 (iii) It is a sole proprietorship, corporation, or partnership with
39 its home office located in the United States, which is not a branch

1 or subsidiary of a foreign corporation, foreign firm, or other
2 foreign-based business.

3 (B) Notwithstanding subparagraph (A), after the death or the
4 certification of a permanent medical disability of a disabled veteran
5 who is a majority owner of a business that qualified as a disabled
6 veteran business enterprise prior to that death or certification of a
7 permanent medical disability, and solely for purposes of any
8 contract entered into before that death or certification, that business
9 shall be deemed to be a disabled veteran business enterprise for a
10 period not to exceed three years after the date of that death or
11 certification of a permanent medical disability, if the business is
12 inherited or controlled by the spouse or child of that majority
13 owner, or by both of those persons.

14 (8) “Foreign corporation,” “foreign firm,” or “foreign-based
15 business” means a business entity that is incorporated or has its
16 principal headquarters located outside the United States of
17 America.

18 (9) “Goal” means a numerically expressed objective that
19 awarding departments and contractors are required to make efforts
20 to achieve.

21 (10) “Management and control” means effective and
22 demonstrable management of the business entity.

23 (11) “Professional bond services” include services as financial
24 advisers, bond counsel, underwriters in negotiated transactions,
25 underwriter’s counsel, financial printers, feasibility consultants,
26 and other professional services related to the issuance and sale of
27 bonds.

28 SEC. 3. Section 10302 of the Public Contract Code is amended
29 to read:

30 10302. (a) Except in cases of emergency where immediate
31 purchase of goods without bid is necessary for the protection of
32 the public health, welfare, or safety, whenever the department
33 contracts for goods in excess of twenty-five thousand dollars
34 (\$25,000), or a higher amount as established by the director, the
35 department shall advertise in the California State Contracts Register
36 the availability of its solicitation, and interested suppliers, upon
37 request, shall be furnished with copies of the solicitation. In
38 addition to advertising in the California State Contracts Register,
39 the department shall post in a public place a copy of the solicitation,
40 which shall remain posted until seven days after an award has been

1 made. Whenever a contract in excess of twenty-five thousand
2 dollars (\$25,000), or a higher amount as established by the director,
3 is made ~~under~~ *pursuant to* this section or Section 10301 without
4 the taking of bids, the department shall prepare a written document
5 stating the fact of the contract together with the facts requiring the
6 contract of the goods without the taking of bids. This document
7 shall be maintained by the department and shall be available as a
8 public record.

9 *(b) Every solicitation shall contain the following statement:*

10 *“It is unlawful for any person engaged in business within this*
11 *state to sell or use any article or product as a “loss leader” as*
12 *defined in Section 17030 of the Business and Professions Code.”*

13 SEC. 4. Section 10344 of the Public Contract Code is amended
14 to read:

15 10344. (a) Contracts subject to the provisions of this article
16 may be awarded under a procedure ~~which~~ *that* makes use of a
17 request for proposal. State agencies that use this procedure shall
18 include in the request for proposal a clear, precise description of
19 the work to be performed or services to be provided, a description
20 of the format that proposals shall follow and the elements they
21 shall contain, the standards the agency will use in evaluating
22 proposals, the date on which proposals are due and the timetable
23 the agency will follow in reviewing and evaluating them.

24 State agencies ~~which~~ *that* use a procedure that makes use of a
25 request for proposal shall evaluate proposals and award contracts
26 in accordance with the provisions of subdivision (b) or (c). No
27 proposals shall be considered that have not been received at the
28 place, and prior to the closing time, stated in the request for
29 proposal.

30 (b) State agencies that use the evaluation and selection procedure
31 in this subdivision shall include in the request for proposal, in
32 addition to the information required by subdivision (a), a
33 requirement that bidders submit their proposals with the bid price
34 and all cost information in a separate, sealed envelope.

35 Proposals shall be evaluated and the contract awarded in the
36 following manner:

37 (1) All proposals received shall be reviewed to determine those
38 that meet the format requirements and the standards specified in
39 the request for proposal.

(2) The sealed envelopes containing the bid price and cost information for those proposals that meet the format requirements and standards shall then be publicly opened and read.

(3) The contract shall be awarded to the lowest responsible bidder meeting the standards.

(c) State agencies that use the evaluation and selection procedure in this subdivision shall include in the request for proposal, in addition to the information required by subdivision (a), a description of the methods that will be used in evaluating and scoring the proposals. Any evaluation and scoring method shall ensure that substantial weight in relationship to all other criteria utilized shall be given to the contract price proposed by the bidder.

Proposals shall be evaluated and the contract awarded in the following manner:

(1) All proposals shall be reviewed to determine which meet the format requirements specified in the request for proposal.

(2) All proposals meeting the formal requirements shall then be submitted to an agency evaluation committee which shall evaluate and score the proposals using the methods specified in the request for proposal. All proposals and all evaluation and scoring sheets shall be available for public inspection at the conclusion of the committee scoring process.

(3) The contract shall be awarded to the bidder whose proposal is given the highest score by the evaluation committee.

(d) Nothing in this section shall require the awarding of the contract if no proposals are received containing bids offering a contract price that in the opinion of the state agency is a reasonable price.

(e) *In addition to the information required by subdivision (a), a request for proposal for a contract that involves the furnishing of equipment, materials, or supplies shall contain the following statement:*

“It is unlawful for any person engaged in business within this state to sell or use any article or product as a “loss leader” as defined in Section 17030 of the Business and Professions Code.”

SEC. 5. Section 12104.5 of the Public Contract Code is amended to read:

12104.5. (a) All rules and requirements governing an information technology acquisition, for which the department determines that a request for proposal (RFP) is appropriate, shall

1 be communicated in writing to all vendors that have expressed an
2 intent to bid and shall be posted in a public location. Any changes
3 to the rules and requirements governing that RFP shall be
4 communicated in writing to all vendors that have expressed an
5 intent to bid and shall be posted in a public location. No
6 requirements other than those provided by law or outside of the
7 published RFP and posted addendums shall be used by the
8 department to score bids.

9 *(b) All requests for proposals shall contain the following*
10 *statement:*

11 *“It is unlawful for any person engaged in business within this*
12 *state to sell or use any article or product as a “loss leader” as*
13 *defined in Section 17030 of the Business and Professions Code.”*

14 ~~(b)~~

15 *(c)* The requirements of this section shall be in addition to any
16 other requirement provided by law.